



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,065	02/27/2004	Moses A. Lipshaw	110651-022	7359

27111 7590 03/22/2007
GORDON & REES LLP
101 WEST BROADWAY
SUITE 1600
SAN DIEGO, CA 92101

EXAMINER

PATEL, TARLA R

ART UNIT

PAPER NUMBER

3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

ED

Office Action Summary	Application No. 10/789,065	Applicant(s) LIPSHAW ET AL.	
	Examiner Tarla R. Patel	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-17 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-17, 20-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 15-17 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Wynn (5,993,405).

Wynn discloses a flat garment for applying compression to a body part (device immobilizes the body part therefore it is compressing the body part, column 4 lines 47-50). The garment comprises a flat central (6) region having inner and outer surfaces, the central region comprising substantially elastic material (the device is made of nylon material, which is elastic in nature see column 5 lines 11-16), and having lateral regions (8, 10) disposed on opposite sides of the central region. A plurality of bands or straps (42a, 42b, 42c, 42d) extend from opposite lateral regions, wherein the bands are juxtaposed to pass between one another (see fig 1) and fasten onto the flat central region of the garment (column 8 lines 10-17).

Each of the bands or strap comprising a planar distal region (44a, b, c, d), proximal and distal edges, wherein one or both edges comprise a curve or indentation, inner and outer surfaces (see fig 1), and fastener (52) for detachably securing distal region to a band extending the opposite lateral region or to the opposite lateral or central region so as to encircle the body part and to draw the first lateral region toward the second longitudinal edge to stretch the central region and thereby provide a tension in the garment that will compress the body part (see figs 7 and 8, column 7 lines 50-67 and column 8 lines 1-17).

With respect to claim 16, Wynn discloses the central and lateral regions are biased into a three-dimensional curvature in order to fit the body part (see fig 1).

With respect to claim 17, Wynn discloses opposing bands that extend substantially perpendicular to a longitudinal axis of the central region and proximal and distal edges are substantially parallel to each other (see fig 7 and 8).

With respect to claim 20, Wynn discloses the plurality of bands or straps are spaced-apart from each other and extend from each of opposite lateral

regions, wherein the positions from which adjacent bands or strap extend from a lateral region are spaced apart (see fig 1).

With respect to claim 21, Wynn discloses each of the bands extend from the lateral region at an angle (90 degrees) with respect to a longitudinal axis of the central region (see fig 1).

With respect to claim 22, Wynn discloses at least one set of opposing bands or straps extends substantially perpendicular to a longitudinal axis of central region, and proximal and distal edges are substantially parallel to each other and at least one set of opposing bands extends at a non-normal angle to the longitudinal axis of the central region, in which the proximal and distal edges are substantially parallel to each other (see fig 7 and 8).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wynn (405) in view of Carpenter et al (6,338,723).

Wynn substantially discloses the invention as claimed, please see rejection to claims 15-17 and 20-22 above; however, Wynn does not disclose indicia printed on the device for measuring compression and a card comprising a scale for measuring the separation of the position of the indicia.

However Carpenter et al teach that it is known to provide a compression garment comprising a system for measuring compression including indicia printed on the outer surface for measuring the stretch of the material and a card having a scale to measure the amount of compression provided by the garment (column 3 lines 40-55). At the time of invention was made, it would have been obvious to one having ordinary skill in the art to have provided the compression garment or device of Wynn to have indicia and a scale card, as taught by Carpenter et al, for the purpose of accurately measuring the amount of compression being applied to the body.

Response to Arguments

5. Applicant's arguments with respect to claims 12-17 and 20-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tarla R. Patel whose telephone number is 571-272-3143. The examiner can normally be reached on M-F 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TP


PATRICIA BIANCO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

3/19/07